

**IN ARBITRATION PROCEEDINGS PURSUANT TO
SECTION 12.6 OF THE MEMORANDUM OF
AGREEMENT BETWEEN THE PARTIES**

CHRISTOPHER D. BURDICK, ARBITRATOR

**Municipal Employees Federation (MEF), Local 101
of the American Federation of State, County and
Municipal Employees (AFSCME), AFL-CIO
Grievant**

AWARD

and

The City of San Jose,

Respondent

Involving the Grievance of Cathy Santos

INTRODUCTION

This matter came on for hearings on October 26 and November 15, 2000, at 151 West Mission Street, San Jose, California, pursuant to Section 12.6 of the 1997-99 Memorandum of Agreement (MOA) between the parties, Christopher D. Burdick Arbitrator, having been previously selected by the parties from a list provided to the parties by the California State Mediation and Conciliation Service.

Appearing on behalf of Grievant Municipal Employees Federation (MEF), Local 101 of the American Federation of State, County and Municipal Employees (AFSCME; "Union") and its member, Cathy Santos, was Linda Dittes, AFSCME Business Agent. Appearing on behalf of the City of San Jose and its Parks, Recreation and Neighborhood Services Department ("PRNS" or "CITY") was Stacey Lucas, Esq., Deputy City

Attorney. Also present on behalf of the Union were Bill Pope, MEF President, and Wendy Teshara; also appearing on behalf of the City were Barbara Santos-George, a Community Services Supervisor of PRNS, and Carolyn Johnson, a Recreation Leader of PRNS. Post-hearing briefs were submitted by the parties to the Arbitrator on December 22, 2000.

THE ISSUE

The parties stipulated that (1) all of the procedural and time requirements of the Grievance Procedure had been complied with by Ms Santos and by the Union, and (2) that the Arbitrator was authorized to resolve the following issue:

- 1) Was Grievant Cathy Santos (“Santos”) specifically assigned to perform the essential duties of a full-time Office Specialist II; and,
- 2) If so, did she perform the essential duties of an OS II for twenty-four (24) consecutive hours, or longer ?

PERTINENT MOA LANGUAGE

The grievance arises out of Section 7.6 of the 1997-99 MOA, which provides:

7.6. Working in a Higher Classification. Upon specific assignment by the Department Director, or designee, a full-time or part-time employee may be required to perform the duties of a full-time or part-time position in a higher classification. Such assignments may be made to existing authorized positions which are not actively occupied due to the temporary absence of the regularly appointed employee or a vacant position. Assignments to a higher classification due to a vacancy shall not exceed six months.

Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least one salary rate (step) higher in the salary range schedule than the rate received by the employee in the employee’s present class. The employee shall not receive any compensation, however, unless the assignment is for 24 consecutive work hours or longer. In the event the assignment is for 24 consecutive hours, the employee shall be

compensated at the appropriate rate commencing with the first work day of the assignment.

Hours of work for part-time employees are governed by MOA Section 6.6:

The Department Head or designee, subject to regulation and control by the City manager or designee, shall determine the number of hours of work per day and work week for part-time employees. Such employees, however, shall not be required to work a normal work week except on an intermittent basis.

Fringe benefits for permanent part-time employees are spelled out in MOA Article 34.

FACTUAL SUMMARY

The following facts are undisputed. The City's PRN Department runs a number of Community Centers throughout the City, of which Berryessa Community Center (BCC) is one. The programs and functions of BCC are set forth in UX 8 and include a wide variety of classical youth, school, sports and recreational programs, facility rentals (for wedding and parties, etc.), an extensive seniors program, preschool and toddler programs, cultural festivals, homework and youth tutoring, and the like – in sum, a broad array of social programs for all segments of a diverse community.

Carolyn Johnson was the Recreation Supervisor at Berryessa and supervised directly one OS II Position (vacant at all times herein relevant) and 5-6 full-time Recreation Specialists. These Recreation Specialist, in turn, supervised 2 part-time Recreational Leaders, Ms. Santos and Mr. Alex Ramirez. There were also, as well, a number of Recreation Aides. Johnson was the authorized "designee" of Ms Santos-George under MOA Sec. 7.6 with the authority to specifically assign employees to work out of class as an OS II without checking with Santos-George first. TR 130-131.

There was a chronic, long-standing OS II vacancy at Berryessa at all times pertinent, and there existed no eligibility list for the class. TR 72. Johnson and Santos-George were anxious to fill the vacancy on some basis, and Santos-George had even discussed outsourcing the job to the private sector. TR 130-131.

There was only one OS II position at Berryessa, and that OS II reported directly to Johnson and supervised no one. The OS II class is a city-wide (and not merely a PRNS departmental only) class, the successor to the old "clerk-typist" class, and is a clerical position found city-wide, in most departments. The OS class has its own career series ladder, starting at OS I. Recreational workers, in turn, have their own, separate career ladder, limited to employment with PRNS and starting at Recreational Aide. At BCC, the OS II apparently spent most of the working day working the front counter, dealing with the public, and assisting the Recreation Aides, Leaders and Supervisors.

In 1999, Santos' was a part-time PRNS employee at BCC, working 10-20 hours per weeks as a Recreation Leader. In the summer, she had to have some surgery, and upon her return, Johnson asked Santos if she would work the OS II job on a full time, WIHC basis. TR 72-73. Santos, reluctant to work on a full-time basis, declined but said she would be glad to do the job on a part-time schedule. TR 74. Alex Ramirez, another part-time Rec. Leader, overheard the conversation and told Johnson he would be glad to fill in the time that Santos could not, as they worked different shifts. TR 75. Johnson agreed, and these two part-timers then split the vacant OS II job, Ramirez working the morning shift and Santos the afternoons.

Santos had previously done WIHC work (for which she received pay) in October of 1998 as a substitute, first for Ms. Sgambati, as an OS II, and then for Mr Giuramond, as a Gerontology Specialist. UXs. 2-5.¹

Santos ceased to report to, or be supervised by, her prior supervisor in the Recreational job series, Ms Teshara, reported directly to Ms Johnson, stopped her primary Rec Leader work on rentals, and started to spend all of her time "in the office", primarily working the counter and dealing with the public. She did no confidential

¹ There is no indication from the record that this assignment was ever made or confirmed in writing, notwithstanding Ms. Johnson's hearing testimony that it was her usual practice to make such WIHC assignments in writing. It also appears that Ms Santos only worked out of class for 16 hours and probably should not have received this WIHC pay under the MOA in the first place.

memoranda, performed no personnel evaluations, and was not given the combination to the safe. She continued to work only on a part-time basis, doing the OS II work in the mornings while Mr Ramirez did it in the afternoons.

PROCEDURAL SUMMARY AND CITY RESPONSE TO THE GRIEVANCE AT THE VARIOUS STEPS

Since the parties have stipulated that the grievance was timely and there are no issues of non-compliance with the grievance procedure raised, no extended discussion of the history of the filing and processing of the grievance is required. However, several of the CITY'S written responses to the grievance are relevant, insofar as they assert (or, more pertinently, fail to assert) as grounds for denial thereof reasons inconsistent with, contradictory to, or supportive of the grounds raised by the CITY at the hearing. In addition, the fact that Ms Johnson initially approved and recommended payment of the WIHC pay to Ms. Santos (see *infra*) is of some weight here as well.

In early 1999, Ms. Santos made several inquiries of Ms. Johnson about receiving WIHC pay for her OS II work. Johnson ultimately agreed to recommend that payment to her boss, Ms Santos-George. In the interim, to allay the confusion which had resulted among the staff at BC over who was doing what, Johnson sent a memo to all BCC staff (UX 16) on April 7, 1999 as follows:

I, would like to clear up the confusion in reference to the office staff (Cathy Santos and Alex Ramirez). As you know, we do not currently have an Office Specialist at the Berryessa Community Center and Cathy and Alex are assisting in the underfilling of that position.

As a result, their responsibilities and duties are as follows: they work for me, but they are able to assist in the duties of the Specialists at the center. This means the following: that if a person comes in to register for Soccer, they can assist in the registration; if something needs filing for seniors, they can do the filing; if a person needs to register for a fee class, they can do the registration; if there is a questions [sic] in reference to a rental, they can answer the question, and so on.

Remember: they are here to assist us in doing our work; this also means that no one program can “monopolize all of their time” or give them directs [sic] solely for a particular job. They are here to help all of us.

UX 16.

When finally presented with a series of oral and written inquiries from Ms Santos *re* her WIHC request (UX 17), Ms Johnson capitulated, approved her request, and forwarded it on to Ms Santos-George for ratification. Ms Santos-George rejected the claim, stating in a memo of November 18, 199 to Ms Johnson (UX 18):

... I asked you if you felt she was doing office specialist II duties. You told me at that time no, she was doing receptionist work², but not Office Specialist II work.

If Cathy had really felt she was doing OS II work, you would have known it yourself. I don't feel that her giving you a list of things she said she did after the fact as proof that she was working at that level. An example would be that an OS II would certainly proof read, if not type the Community Center Brochure. Since Berryessa's had so many mistakes in it, even other staff did not look at her as the Office Specialist II....³

...I feel that she was not doing Office Specialist II work.
(UX 18).

There is no reference in this memo to the Grievant's alleged failure to comply with the “specifically assigned”, 24- consecutive hour, or “core duties” requirements . Indeed, in her second written response to Ms Santos' claims, Ms Santos-George failed again to mention any of these three elements. Instead, in her letter to Ms Santos of March 9, 2000, she asserted that “... you did not indicate that you did **all**⁴ of the duties of an

² A review of the job description for OS II indicates that “being a receptionist” is one of the prime, if not core, duties of that classification – see bullets 3, 8 and 9 of UX 6. At BCC this seems to have been the primary OS II duty.

³ This reference is ironic, as the memoranda of both Ms Johnson and Ms Santos-George are replete with typos, misspellings and poor syntax.

⁴ The City has never asserted, before or since, that the worker in the lower class must perform **all** of the duties of the higher class.

Office Specialist II...” (JX 2: Emphasis added). It was not until the PRNS Department Head, Mr Linder, wrote Ms Santos on March 14, 2000, that the 24-consecutuve hour defense first appeared , although Mr Linder makes no reference to any “core” or “essential duties” requirement, believing instead that the vacant OS II tasks at BCC “...were parceled out to other full-time staff...”⁵

Instead, we must wait until the lengthy letter of April 27, 2000 to Ms. Dittes from Jennifer Maguire, Assistant to the City Manager, for the first time the employer asserts all three of the “specifically assigned”, 24-consecutive hour and “majority of the core duties” claims (JX 2), as a totality.

THE JOB DESCRIPTIONS AND THE “PDQ”

There are two relevant civil service job classes here involved, OS II and Recreation Leader. The City has adopted classic public sector job descriptions for both (Un. Exs. 5 and 7). The clerical OSII class pays more than does the Rec leader class, and so a Rec Leader assigned to work as an OS II (in what might appear to some to be a class of lesser responsibility) is entitled to WIHC pay if the requirements of Sec.7.6 of the MOU are met. The OS II spec (Un. Ex. 7) lists a number of “typical duties”, including the typing of reports, working with office equipment, working the counter and answering the ‘phone, screening calls and visitors, an generally assisting the public. The OS II spec lists three “may” duties – composing letters and reports; receiving , recording, and providing cash payments; and training of less experienced workers.

The Recreation Leader spec (Un. Ex. 5) has a similarly lengthy list of disparate tasks, including facility rentals, preserving order and discipline, coordinating and providing sporting and recreational activities to a broadly diverse consumer group, record keeping and report preparation, and providing general assistance. There is some overlap and duplication between the two job descriptions, and so the City contends, in part, that

⁵ This assertion, too, was factually inaccurate, as it seems clear that the bulk of these duties were performed by only two part-time Rec. Leaders, Ms Santos and Mr Ramirez

all Santos was doing when she was “underfilling” for the missing OS II was the same type of work she was required to do as a Rec Leader. (City Brief, Page 3, 15-19; page 5, 4-8).

Several years ago, the City conducted a job survey of the OS II class and interviewed OS II workers at another Community Center to determine the frequency of tasks, their relative difficulty and merit and the consequences of error therein. This document (the so-called PDQ Questionnaire; Un. Ex. 6), was described by Ms Santos-George as being generally applicable to the BCS position as well (TR 128, 132 – “[its a] classification study of an Office Specialist II who also works at a center very similar to Berryessa in scope of activity level, programming level, things like that[and]....by an large, the - - it [the PDQ] would have ended up being very similar”.

THE MEF SHOP STEWARDS’ ADVISORY

Notwithstanding its lack of facial ambiguity, Sec. 7.6 had apparently led to much confusion among MEF members. To explain to its members the City’s interpretation of the meaning of the section and its proper application, an MEF steward, Gail Dance, and City Administrative Officer Maryellen Dick, jointly attempted to draft a memorandum which would clarify the City’s interpretation of that section. TR 165-166. Ms. Dance took the laboring oar in this attempt and exchanged several drafts with Ms. Dick, the last of which was ratified by the MEF Board and is City Ex.2. As relevant to this dispute, that document states:

“The following is intended to clarify how a claim of work in a higher class is **considered by the City**. It is very important to make sure that the following criteria are met before seeking a temporary salary adjustment:

....

2. Work that is divided up among several employees is not considered assuming the responsibilities of the position itself.

3. Higher class pay was initially established to allow for temporary placement in the event a supervisor was off work for more than 24 consecutive work hours (e.g. vacation, extended illness) yet **core duties still needed to be preformed**. If the employee is assigned to assume responsibility for performing core duties (e.g. assigning work, making decisions related to the work of others, or supervising a work crew) during your supervisor's absence, you are entitled to higher class pay.” (Emphasis, the Arbitrator’s).

CONTENTIONS OF THE PARTIES

The Union argues that Santos was specifically assigned by Johnson to do the normal range of Berryessa OS II duties; that she did what she was directed and instructed to do; that in so doing she performed a sufficient number of core or essential duties to qualify; that she ceased to do any of her normal Recreation Leader duties; and that the work she did was consistent with the City’s “Classification Study PDQ” for the OS II class. Union Ex. 6.

The City argues, primarily, that Santos and Mr Ramirez split the job and so, under the Stewards Advisory Memorandum (City Ex. 2), WIHC pay is precluded when two or more employees split the duties of the absent higher class employee. Implicit in this argument is the further contention that, due to the split of duties and the assignment of work, Santos did not perform most (or even some) of the “core duties” of the higher class, something also required under City Ex. 2. The City observes that there is substantial overlap between the “typical duties” of the Rec Leader and OS II class and all that Ms. Santos did was work covered by her regular job description. In light of these contentions, the City regards the “24-consecutive hour requirement” as moot and does not address it.

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DISCUSSION AND ANALYSIS

It is not disputed that this MOA Section entitles part-timers to its benefits, and it is also undisputed that the OS II position is one in a higher class and, at BCC, was vacant. We are thus left with the disputed portions of the Section as discussed below.

(A) Analysis of MOA Section 7.6.

Ordinarily, it is the first responsibility of an arbitrator (or judge, in a trial) simply to read, construe, interpret and then apply the contract language in conformity with its plain language and common meaning. If that can be done without resort to extrinsic aides or evidence, the arbitrator/judge should search no further. The clear language of the contract should prevail over glosses or interpretations placed there on by just one of the parties.

Under this simple approach to interpretation, and broken down into its constituent parts, MOA Section 7.6 basically and unambiguously provides that:

- 1) Only employees who are “specifically assigned” by the Department Director or designee are eligible for compensation for work in a higher class (WIHC); and,
- 2) There is no express MOA requirement that the assignment be made in writing; and,
- 3) Both full-time and part-time employees are eligible for compensation for work performed in a higher class (WIHC); and,
- 4) The assignment must be to a vacant position in a higher paying job class; and,
- 5) The employee must work 24 consecutive work hours, or longer, in that higher class to be eligible for the WIHC pay.

The Section is silent on how many of “the duties of [the] position in a higher classification” must be performed. That is, the MOA simply requires that, for 24 consecutive work hours, the lower-placed employee must perform “the duties” of the vacant higher classification. So, for example, in the case of a Police Officer assigned for

24 (or 80, if the MOA so requires) hours to fill a vacant Sergeant's position, if the Officer supervises the squad for those 24 (or 80) hours and does nothing more, it would appear that the Officer is entitled to that WIHC compensation even though, for example, he imposed no discipline, adjusted no grievances, wrote no personnel evaluations, composed no confidential documents, and did nothing more than "ride and supervise". By analogy here, if the Rec Leader did nothing more for 24 hours than "work the counter", then it would appear, from the face of the Section, that if those were some of "the duties" of the OS II class, that was enough to qualify for the WIHC pay.

Here, however, the stipulated Issue, *supra*, requires an employee seeking WIHC pay to "...perform the essential duties of..." the higher classification, a requirement not expressly spelled out in Section 7.6 itself. The CITY referred to these "essential duties" during the hearing as "the core duties" of the higher class. This appears to impose a higher standard for eligibility for WIHC pay than that required by the literal language of the Section itself. We also have the complication of the Shop Steward Advisory (see discussion at (B), *infra*), its declaration that "job splitting" cannot result in WIHC for any employee, and its application to these facts. Its author, Ms. Dance testified as follows:

Q. [By Ms. Dittes]: If the work, and I think you explained this in the beginning, if the work, the job duties were split up, in other words, the job description has filing and it has typing and it has answering the phone and it has doing reports and it has, you know, doing cash receipts; in this instance, cash handling was one of the jobs and they were actually – when you split up, are you talking about one person gets the cash receipts, typing and answering the phone and the other person gets doing reports handling the front desk? Is that – when you mean the duties are split up, do you mean the actual duties are split between more – several employees, more than one employee?

A: [By Ms., Dance] Right.

Q. Or do you mean that in the morning somebody does all of that stuff and the afternoon somebody does all that stuff ?

A. No. If you had one person doing all that stuff in the morning and one person doing all that stuff in the afternoon, again that is a scheduling determination by the department. The duties are being performed. If you – it is totally different than – the department may do that because of schedules.

.....

THE ARBITRATOR: Sounds like the witness [Ms Dance] is – if I understood your question, Ms. Lucas, it dealt with the hypothetical that the witness started off with very early, is the incumbent leaves for four weeks. Instead of assigning someone to fill in, they say “Ralph, you take the fines, Janie you take the filing, Sue you take care of the cashiering, and we will all get along until Janie gets back. That is splitting the duties under item 2 ?

THE WITNESS: Right.

THE ARBITRATOR: Nobody is going to get work in a higher class. It is divvied up. But the answer you gave later on is, if somebody does all of those in the morning and goes home and somebody else comes in and does four hours in the afternoon, you don’t regard that as job splitting.

THE WITNESS: No.

Tr 159-161.

In regards to “core” or “essential” duties, Ms. Dick clarified that the City looks not just to the job description and then demands a mechanical performance of all (or most) of every “typical duties” listed therein –instead, the City looks to the actual assignment and the duties at that particular location/department and not merely at the enumeration of duties in the job description (or, here as well, the PDQ):

THE ARBITRATOR: So, in resolving this grievance, it seems to me what I got to do is determine what the core duties are of an Office Specialist II, isn't that correct?

THE WITNESS [Ms. Dick]: What the core duties of that position were, because different office specialist duties have different core duties.

THE ARBITRATOR: Given the fact that, forgetting about part-time here and four hour blocks and three hour blocks, all one has to do to hit the threshold is work twenty-four consecutive hours ? I could work three eight-hour days, hit the threshold, and during that time period might have, just for whatever, luck of the draw or whatever, never have to open the safe, for example, or never had to type a confidential memo ?....

.....

THE WITNESS: You were willing, you were able, you were prepared, you had the skills, knowledge and information, but it ... what is the purpose they have got that position sitting there and are you fully competent and able to perform that position

[Tr. 177-178]

(B) Analysis of The Shop Steward Advisory.

In light of this testimony by the two main participants in the drafting of the Advisory, we may (and do) draw several legal and factual conclusions. First, it is to be noted that this Advisory is not a side-letter to the MOA, nor a truly bilateral document, although it was the product of consultation between Ms Dance and Ms Dick. Instead, it is an attempt by the Union to advise its members of **how the City interprets and applies** the MOA, to tell them which claims the City will accept and which it will reject. It does not purport to be an addendum to, or a revision of, the MOA itself. Nor does the Advisory explicitly state that MEF agrees with, or accedes to, the City's interpretations.

Second, the Advisory seems to anticipate the more ordinary case in which one employee (usually a supervisor) in a well-ordered job series/career ladder is absent and one of his/her subordinates takes over to do more responsible work in that same job series. That is not the case we have here, where the Grievant did (arguably easier and less responsible) work in an entirely different and distinct job series.

Third, as Ms. Dick testified, in determining what are the core or essential duties, we must look first to the actual job, position and assignment in question. It is only after analyzing that particular job that we look next at the generic job description. It is the work actually performed at the particular job site, in that particular department, for that particular supervisor by the incumbent (but missing) OS II which determines WIHC eligibility for the putative OS II.

In reviewing our record, it seems clear that the primary core or essential duty for the OS II at BCC (at least at this time) was working the counter, dealing with the public (in person or by phone), answering questions and giving directions, distributing forms, doing a modest array of simple (indeed, almost menial) office tasks (e.g., inventoring and ordering office supplies, doing staff memos and rosters, proofreading, etc.), and helping out the rest of the staff. Both Ms Santos and Mr Ramirez did this work daily, one in the morning and the other in the afternoon. It also seems clear that Ms Santos' core or essential Rec Leader duty was facility rentals, something she ceased to do completely once she switched to mornings as an OS II. If the roles were reversed and BCC needed to "underfill" for an absent Cathy Santos, that "acting" Rec Leader would be primarily responsible (or so it appears from the testimony) for facility rentals and set ups at BCC, and not for, e.g., seniors or sports programs. Thus, Ms Santos testified, without contradiction:

THE ARBITRATOR: Without going through the job descriptions for the two different jobs, why did you – what did you spend most of your time doing as a Rec Leader before you went off on your surgery ?

THE WITNESS [Ms. Santos]: Do you want to know what I started off doing or what I was doing right before I left ?

THE ARBITRATOR: For the three or four months before you went off for your surgery ?

THE WITNESS: I filled in in the office and I did rentals. I did set ups for rentals, and I did some night hours for fee classes.

THE ARBITRATOR: When you came back from surgery, what is the difference ? What was it you were doing from January to September that you weren't doing ---

THE WITNESS: I was strictly in the front office.

The ARBITRATOR: Working at the front desk ?

The WITNESS: Right.. I was told I worked for Carolyn Johnson, not for Wendy [Teshara].

Tr. 56-57.

In summary, the Arbitrator concludes that, even within the restrictive definitions and guidelines of the Stewards Advisory as amplified and explained by Ms Dick and Ms Dance, Ms Santos was performing the core or essential duties of the missing OS II at BCC, and she did so from January through September of 1999. This finding is limited to these unique facts and circumstances -- it may well be that performance by Ms Santos of these same duties at another Community Center might not have constituted performance of the core or essential duties of an OS II at that work site as a replacement for that missing OS II. But at BCC, at the times here relevant, and based on this record, Ms Santos was doing the core duties for her 4 hours a day.

(C) The 24-consecutive hour requirement.

The City decided not to brief this issue, believing it to be legally irrelevant in light of its “core duties” arguments and contentions. But it seems abundantly clear that Ms Santos more than met this requirement, as she worked every work day (albeit on a part-time basis) doing nothing but her assigned OS II work, far exceeding the 24 consecutive hour requirement. That rule requires that the particular employee work, without interruption or return to other duties, 24 straight hours out of class. There is no requirement that these hours be on consecutive days or in 8-hour blocks each day – the only express MOA requirement is that the worker must devote 24 consecutive, uninterrupted working hours to the work of the higher class, and Ms. Santos did so..

(D). The “Specifically Assigned in Writing” Requirement.

As noted above, nothing in Sec.7.6 requires that the assignment be initially made or subsequently memorialized in writing. Ms. Santos’ previous WIHC assignments were made orally. Even if we were to read into Sec 7.6 such a requirement, the memorandum of Ms Johnson to the staff of BBC dated April 17, 1999 (Un. Ex. 16) constituted substantial compliance with such an implied, unwritten MOA requirement. And here, as that Memorandum reflects, the assignment was certainly specific – the entire BCC staff was alerted as to who would be doing what and why and where the new, temporary lines of command would be. This more than met the MOA requirements.

(E). The Overlap In Similar Duties Between the Job Descriptions.

There are substantial overlaps between the job descriptions, which is not unusual in civil service.⁶ That is, it is possible for a worker to do some (indeed, many) of the same tasks and duties under the Rec Leader spec as under the OS II spec. But this begs the

⁶ The City and County of San Francisco, for example, has over 1600 different job classes (the federal government has only 700 or so), and the “distinguishing characteristics” between some of these classes is sometimes so miniscule as to be illusory.

question presented here, of whether, under these facts, the mere repetition of duties in two job classification descriptions defeat the reasonable expectations an employee who seeks WIHC pay after being specifically assigned to do the work of a missing employee in the higher class.

Here Santos testified, without contradiction, that her primarily duties as a Rec Leader were, first, facility rentals and set-ups, and, secondarily, helping out at the counter. After she was assigned by Johnson to “underfill” for the missing OS II she ceased to do any facility rental work and devoted herself entirely to the duties and tasks described above. The mere fact that some of these duties may also be properly performed by Rec Leaders begs the underlying question of whether, at BCC, these were the core duties of that OS II, a question we have already assigned in the affirmative.

AWARD

The City is surely entitled to insure that employees do not “assign themselves” to work in a higher class or to claim WIHC pay for *de minimis* additional duties. But the Association is entitled to a fair, simple and equitable application of its labor agreement, and the workers are entitled to rely on the actions of their immediate superiors if made within the apparent scope of their authority (and here there is no dispute over that Ms. Johnson’s power to make WIHC assignments when she so desired).

In light of these factual findings and contractual analysis, the Grievance is GRANTED. Ms. Santos is entitled to, and shall, be paid for work in the higher class, for the entire duration of her assignment as an OS II, from January 1999 through September of 1999, at the rate set forth in the MOA, but without any interest thereon. The Arbitrator retains jurisdiction to resolve any disputes between the parties over the calculation of the back pay or implementation of this Award.

DATED: February _____, 2001

Christopher Burdick

Arbitrator

